THE HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION No.21625 OF 2005

DATED: 15-11-2005

Between:

M/s. Mahalaxmi Motors Limited

Rep. by its Managing Director, Sri Mahendra C. Mehta,

A-4/2, Chandralok Complex,

Sarojini Devi Road, Secunderabad-3.

.. Petitioner

AND

The Deputy Commissioner of Income Tax

Circle 2(1), Ayakar Bhavan, Basheerbagh,

Hyderabad – 500 001 & another

.. Respondents

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THE HON'BLE MR. JUSTICE S. ANANDA REDDY

WRIT PETITION No.21625 OF 2005

ORDER: (Per Hon'ble Mr. Justice S. Ananda Reddy)

This writ petition is filed by the petitioner invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issue of Writ of *Mandamus* declaring the proceedings issued by the

1st respondent-Deputy Commissioner of Income Tax,
Circle 2(1), Hyderabad, dated 16-12-2002, levying surcharge as illegal and without jurisdiction and sought for setting aside the impugned proceedings.

The writ petitioner is a company. It was an assessee before the 1st respondent. The premises of the petitioner was subjected to search and seizure, as a result of which block assessment was framed for the block period 01-04-1985 to 13-12-1995 under the provisions of the Income Tax Act, 1961 (for short 'the Act'). While so, the petitioner approached the Income Tax Settlement Commission seeking settlement of the dispute between it and the Income Tax Department and the said application was entertained by the Settlement Commission and finally an order was passed by the Settlement Commission on 11-02-2002 for the above referred block period and the said order passed by the Settlement Commission resulted in ascertaining tax liability of Rs.81,91,620/-, which is evident from the annexure enclosed to the order of the Settlement Commission. Subsequent to the said order of the Settlement Commission, the

1st respondent issued a proceeding demanding the amount of tax payable by the petitioner as ascertained by the Settlement Commission. However,

subsequently, the impugned proceedings, dated 16-12-2002, was issued amending the original proceedings by including surcharge @ 15% on the income tax, as determined by the Settlement Commission. The said proceedings of the 1st respondent is impugned in the present writ petition.

According to the learned counsel, the 1st respondent has no jurisdiction to amend or alter the order of the Settlement Commission, which has ascertained or determined the tax liability on settlement of the claims between the petitioner and the Department. Therefore, the levy of surcharge is without jurisdiction and sought to set aside the same.

A counter is filed on behalf of the Department disputing the contentions of the petitioner.

We have heard both sides at length, though it is not necessary for the purpose of determining the jurisdiction of the 1st respondent. The 1st respondent cannot incorporate the demand with reference to surcharge by way of amendment of the proceedings resorting to Section 154 of the Act.

On consideration of the material on record including the order passed by the Settlement Commission as well as the provisions of the Act, we are of the opinion that the

1st respondent has no power or jurisdiction to levy surcharge which was not part of the liability as determined by the Settlement Commission. On that simple ground, we set aside the impugned order to the extent of levying surcharge on the income tax liability of the petitioner.

The Writ Petition is accordingly allowed to the extent indicated above. No order as to costs.

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B. SUDERSHAN REDDY, J

Date:15-11-2005

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S. ANANDA REDDY, J

PV